

ORDINANCE NO. O2015-006

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and energy for power, heat and light, and any other purposes for which gas and energy may be used.

THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions.

Where used in this Franchise (the “Franchise”) the following terms shall mean:

1.1 “City” means the City of Tumwater, a code city of the State of Washington, and its successors and assigns.

1.2 “City Code” means the Tumwater Municipal Code.

1.3 “Council” means the City Council for the City of Tumwater.

1.4 “Director” means the City of Tumwater Public Works Director, or designee.

1.5 “Facilities” means, collectively, any and all (i) natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communication systems; (ii) electric transmission and distribution systems, including but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, fixtures, and communication systems; and (iii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.6 “Franchise Area” means any, every and all of the roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, and highways that

may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended. The Franchise Area does not include any private property or any other public property owned, in whole or in part, leased, or otherwise occupied by the City, the Port of Olympia or PSE-owned or leased properties or easements of any kind.

1.7 “Ordinance” means Ordinance No. O2015-006, which sets forth the terms and conditions of this Franchise.

1.8 “PSE” means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns (subject to the terms of Section 18).

1.9 “Public Right-of-Way Improvement” means any City capital improvement or the construction, relocation, expansion, repair, maintenance, or removal of any part of the Franchise Area or City owned Facilities located on or in the Franchise Area for the benefit of the City (including but not limited to parks, roads and/or streets, sidewalks, curbs, pedestrian and/or vehicle traffic, sewers, storm water facilities, water facilities, electrical, traffic signal, street lighting, trees, landscaping, bicycle paths and lanes, equestrian trails or other pedestrian amenities, and any other City facilities) that is undertaken by or on behalf of the City and is funded by the City (either directly with its own funds or with other monies obtained by the City).

1.10 “Public Works Standards” means the Tumwater Development Guide, Tumwater Municipal Code and any other adopted Public Works standards, policies, regulations or guidelines including the WSDOT Local Agency Guidelines and Standard Plans.

Section 2. Grant of Franchise.

2.1 Grant of Rights. The City does hereby grant to PSE, subject to the terms and conditions of this Franchise, the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and energy for power, heat, light and such other purposes for which gas and energy may be used.

2.2 Limitations. This Franchise shall not convey any right to PSE to install Facilities on or to otherwise use City-owned or leased properties or easements outside the Franchise Area.

2.3 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof. The City reserves the right to acquire, construct, own, operate and maintain a municipal electric utility to serve all or any portion of the City, at any time, and to fully exercise such right in accordance with applicable federal and state laws.

2.4 Compliance with Laws. PSE specifically agrees to comply with the provisions of all applicable City Codes, ordinances, Public Works Standards, regulations, procedures, permits or approvals, as currently existing or from time to time amended. In the event of a conflict between any such provisions and this Franchise, the express terms and conditions of this Franchise shall govern.

Section 3. Franchise Term.

3.1 Initial term. This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

3.2 Renewal. This Franchise may be renewed, at the sole discretion of the City of Tumwater City Council, for two additional five (5) year terms upon the written request of PSE, such request to be submitted not more than one (1) year nor less than one hundred eighty (180) days prior to the expiration of the current term.

3.3 Repeal of Prior Franchises. Upon the effective date of this Franchise and acceptance of such by PSE, all prior franchises between the City and PSE, or its predecessors in interest, which it has acquired for the distribution and sale of natural gas and electrical energy shall be deemed repealed.

Section 4. Noninterference of Facilities.

PSE agrees to locate and maintain its Facilities and perform any and all activities authorized by this Franchise so as not to unreasonably interfere with the free passage of pedestrian and/or vehicular traffic, or with the reasonable ingress or egress to the properties abutting the Franchise Area.

Section 5. Location and Marking of Facilities.

5.1 Location. PSE shall provide the City, upon the City's reasonable request, copies of available maps in use by PSE showing the location of its Facilities, both in use and abandoned, within the Franchise Area, provided the request is limited to Facilities at specific locations in the Franchise Area. In addition, the actual location of new Facilities installed by PSE within the Franchise Area, including underground Facilities and appurtenances, their depths below surface of ground or grade of a right-of-way, and any related existing equipment to which the Facilities are connected shall be depicted on a map and submitted to the City in AutoCad or other digital format mutually acceptable to the City and PSE within one hundred twenty (120) days of the installation of the Facilities. As to any such maps provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities is shown, such Facilities are shown in their approximate location.

5.2 GIS/Digital Data. At such time as PSE develops and deploys Geographic Information System ("GIS") technology for its utility maps and records throughout the Franchise Area and has such information available in digital GIS format for its Facilities within the Franchise Area, PSE shall provide such maps to the City in digital GIS format.

5.3 Design Markings. In the event the City desires to design new streets or intersections, renovate existing streets, make utility improvements or repairs, or complete any other Public Right-of-Way Improvement within the Franchise Area, PSE shall at the City's reasonable request, provide the location of PSE's underground Facilities within the relevant portion of the Franchise Area by either field markings or by locating the Facilities on the City's design drawings, and shall provide all other reasonable cooperation and assistance to the City in determining the location of such Facilities. The City shall contact 811 to obtain design locates. Upon reasonable request by the City, PSE shall verify the location and depth of its underground Facilities within the relevant portion of the Franchise Area by excavating (e.g. pot holing) at no expense to the City.

5.4 Survey Markers and Monuments. PSE shall, using a licensed surveyor, within thirty(30) days, replace all markers or monuments disturbed during any work by PSE within the Franchise Area. PSE shall pay all costs associated with replacing such lost, destroyed or disturbed monuments or markers. All applicable laws and regulations shall be complied with, including but not limited to, WAC 332-120, WAC 332-130, RCW 58.09, and RCW 58.24.040. The monuments shall be replaced with the proper type according to the Public Works Standards. Prior to PSE commencing any excavation work within the Franchise Area, PSE shall , using a licensed surveyor, reference all monuments and markers

relating to subdivisions, plats, highways, and other surveys if they are likely to be disturbed. The reference points shall be located so that they shall not be disturbed during PSE's operations under this Franchise. The method of referencing these monuments or other points shall be approved by the City before placement. A complete set of reference notes for monuments and other ties shall be filed with the City.

5.5 Surface Markings/Stakes. Prior to PSE commencing any excavation work within the Franchise Area, PSE shall comply with RCW Chapter 19.122, as now existing or hereafter amended, in locating its underground Facilities within the Franchise Area in the vicinity of such excavation work. PSE shall also provide survey control and staking for the new Facilities being installed. Staking shall be in compliance with requirements contained in the Public Works Standards and shall be sufficient to ascertain that the new Facilities are being installed to the location and depth identified in the design plans submitted as part of the permit application. In the event of any conflict or inconsistency between this Section 5 and Chapter 19.122 RCW, as now existing or hereafter amended, Chapter 19.122 will control.

5.6 No Warranty or Waiver. Nothing herein is intended to relieve the parties of their respective obligations arising under Chapter 19.122 RCW or other applicable law with respect to determining the location of utility facilities prior to construction. Further, neither the provisions of this Franchise nor the absence of any specific provision in this Franchise is intended to limit, detract from or render ineffective any disclaimer (including without limitation, any disclaimer as to accuracy or completeness) placed by PSE on any map furnished to the City pursuant to this Section.

5.7 Any drawings and/or information concerning the location of PSE's Facilities provided by PSE shall be used by the City solely for management of the Franchise Area. PSE shall mark as confidential or proprietary drawings and/or information as "Confidential Proprietary Information." The City shall take all prudent steps reasonably necessary to prevent disclosure or dissemination of such drawings and/or information to any Third Party, without the prior express consent of PSE, to the extent permitted by law.

Section 6. Requirement to Obtain Permits.

6.1 Permits and Permit Applications. PSE shall, at its expense, obtain all permits, (including rights-of-way permits), and pay all permit fees required by applicable City ordinances, Public Works Standards, regulations, resolutions and rules prior to commencing any work within the Franchise Area except for emergency work under Section 6.2 and routine maintenance under Section 6.3.

PSE permit applications shall, as required by generally applicable City Code requirements, Public Works Standards, and regulations, be provided in a digital format acceptable to the City showing the position and location of the proposed Facilities to be constructed, laid, installed, or erected at that time, show their relative position to existing rights-of-way or property lines upon prints drawn to scale, designate rights-of-way by their names and improvements, such as, but not limited to, sidewalks, curbs, gutters, shoulders of roadway, ditches, paved roadways, roadways to property lines, turnouts, parking strips, telephone or electric distribution poles, and water, sewer and storm pipes and all associated valves, structures or other appurtenances existing on the ground to be occupied, and any additional information that may be required by the Director. The City shall, upon the reasonable request of PSE, provide PSE with information regarding the location of its facilities in the proposed improvement area. The City shall have final approval authority as to the location of PSE Facilities within the Franchise Area which shall amongst other things take into consideration the availability of useable space within the Franchise Area and existing and future improvements to be made by the City. The City may require that existing PSE Facilities that will no longer be used, be abandoned and removed from the Franchise Area. As required by generally applicable City Code requirements, Public Works Standards, and regulations, PSE shall specify the class and type of materials to be used, equipment to be used, and mode of safeguarding and facilitating the public traffic during construction. The manner of excavation, construction, installation, backfill, and temporary structures such as, but not limited to, traffic turnouts and road obstructions shall meet the City Code, Public Works Standards, and be reasonably satisfactory to the Director. All traffic control shall be in accordance with the right-of-way permit, and as required by the permit shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). To the best of its ability, PSE shall indicate on any permit application the total time needed, date of beginning work, days of the week and time of day to complete the work. The time needed to complete the work and the days and working hours for the work is subject to approval by the City as a condition of the issuance of the permit or approval. If deemed necessary to accommodate traffic volumes and limit congestion, the City may restrict the days and hours of work, including but not limited to requiring the work to be performed during night time hours. PSE shall restore the surface of the Franchise Area as nearly as practicable to the same or better condition as existed prior to the work and otherwise as required by the Public Works Standards. Such restoration responsibility, including maintenance of the restored area, shall continue for the length of the Franchise.

6.2 Emergency Exception to Permit Requirement. In the event of an emergency in which PSE's Facilities within the Franchise Area are in a condition as to immediately endanger the property, life, health or safety of any individual, PSE may take action immediately to correct the dangerous condition without first

obtaining any required permit so long as PSE reasonably attempts to inform the City of the nature and extent of the emergency, and the work to be performed, prior to commencing the work. This provision shall not relieve PSE from later obtaining any necessary permit for the emergency work. PSE shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.

6.3 Maintenance. PSE shall have the right to conduct maintenance to repair, modify, supplement, replace or upgrade PSE's Facilities within the Franchise Area, provided that PSE shall obtain any permits or authorizations required by all applicable federal, state, and local laws, rules and regulations prior to the performance of any said routine maintenance. Notwithstanding any requirements contained herein, routine maintenance that does not interfere with pedestrian or vehicular traffic or involve excavation within the right-of-way (such as inspection, switching, opening vaults and enclosures outside of travelled ways), does not require a permit.

6.4 Notice of Entry. At least forty-eight (48) hours prior to entering the Franchise Area adjacent to private property to perform excavation or alteration of Facilities that is likely to have a material adverse impact on the adjacent private property, except those emergency activities exempted from permit requirements, PSE shall notify the affected private property owners in writing of its activities in accordance with PSE's standard processes and procedures. A pre-printed door hanger may be used for this purpose.

Section 7. Standard of Performance.

7.1 Trenching. PSE shall not excavate a trench and leave the jobsite at the end of the workday without complying with the following: Trench areas within a drive lane in the Franchise Area must be plated or patched, either temporarily or permanently, before the end of the work day in which they have been opened. Trench areas within the Franchise Area, but not within a driving lane, must also be patched within the time limits specified by the City in the right-of-way use permit, or in the Public Works Standards. Final surface restoration shall be completed, weather permitting, within the time limits specified by the City in the right-of-way permit or as specified in the Public Works Standards.

7.2 New Pavement Surfaces. Any new pavement or surfacing completed within the Franchise Area during the five (5) year-period immediately prior to the date of permit application (or such longer time as permitted by generally applicable City Code requirements or regulations) shall not be opened by PSE unless required by an emergency and subject to the provisions of Section 6.2 above. PSE shall install new asphalt overlay on any street that is open cut, whether in an emergency

or otherwise. The new asphalt overlay shall be for a minimum of one (1) block (approximately 500 feet) in length in both directions from the open cut, unless determined otherwise by the Director in accordance with the City Code, Public Works Standards, or Department of Public Works internal policies. PSE shall not open cut any street without an approved permit except as described in Section 6.2. Permit conditions will be reasonable based on facts and circumstances.

7.3 Within one hundred twenty(120) days of completion of any installation of PSE's Facilities in the Franchise Area, PSE shall submit to the Director plans showing the "as-built" location of the Facilities in AutoCad or other digital format mutually acceptable to the City and PSE. PSE shall, in carrying out any authorized activities within the Franchise Area, comply with all applicable laws, codes and standards, as now existing or hereafter adopted or amended, and in compliance with the terms of this Franchise, whether or not the work is performed by PSE, its agents, employees, subcontractors, or other third parties at PSE's direction.

Section 8. Undergrounding of Facilities.

8.1 All new Facilities, of 34.5 kV or less, installed within the Franchise Area during the term of this Franchise shall be located underground; provided that installation of cabinet enclosed switches, transformers and similar equipment will be permitted and installed pursuant to the provisions of any applicable City codes, ordinances, Public Works Standards, regulations, procedures and policies, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise and subject to and in accordance with any applicable Tariffs on file with the WUTC.

8.2 PSE will cooperate and participate with the City in the formulation of policy and development of an underground management plan with respect to PSE's aerial Facilities within the City of Tumwater. The parties will use best efforts to adopt the plan by December 31, 2016. The plan will address, among other things, the projection of costs, benefits, and proposed mechanisms for financing conversion.

8.3 If, at any time during the term of this Franchise, the City shall direct PSE to underground existing Facilities (of 34.5 kV or less) within the City, other than as described above, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC.

Section 9. Relocation of Facilities.

9.1 Public Right-of-Way Improvements. Whenever a Public Right-of-Way Improvement is undertaken within the Franchise Area, and such Public Right-of-Way Improvement requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 9.4), the City shall:

9.1.1 Provide PSE, no less than one-hundred twenty (120) business days, written notice prior to the commencement of such Public Right-of-Way Improvement, requesting such relocation; and

9.1.2 Provide PSE with reasonable plans and specifications for such Public Right-of-Way Improvement.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City within the timeframe agreed upon to accommodate the Public Right-of-Way Improvement project.

9.2 Location of Relocated Facilities.

9.2.1 The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of Facilities required to be located under this Section 9. PSE shall act in good faith and shall use its best efforts to install relocated Facilities in such space within the Franchise Area, consistent with prudent utility practice. If the parties agree there is not sufficient space for the relocated Facilities in the existing Franchise Area, then, unless otherwise mutually agreed by the parties, the City shall provide sufficient space for the relocated Facilities by obtaining additional right-of-way or other rights mutually agreeable to the City and PSE, which shall be Franchise Area, title of which shall be in the City's name.

9.2.2 If, (a) notwithstanding the use of best efforts by the parties as outlined above, the City and PSE do not agree whether there is or will be sufficient space within the Franchise Area for the Facilities required to be relocated under this Section 9, or (b) locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice, PSE may install those Facilities on property outside of the Franchise Area, the rights for which shall be obtained by PSE at no expense to the City. The City and PSE shall each act in good faith and use their respective best efforts to mutually agree on the location of such relocated Facilities outside of the Franchise Area. Absent such mutual agreement, nothing in this Section 9.2.2 shall limit the rights of either party with respect to acquisition or use of property rights outside of the Franchise Area.

9.3 Alternative Proposals. PSE may, after receipt of written notice requesting a relocation of its Facilities under this Section 9, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise PSE in writing if one or more of the alternatives are suitable to accommodate the work and would otherwise necessitate the relocation of PSE's Facilities. If so requested by the City, PSE shall submit additional information to assist the City in making such an evaluation. The City shall give each alternative proposed by PSE full and fair consideration. In the event the City determines in its sole discretion that there is no other reasonable alternative, PSE shall relocate its Facilities as provided in this Section 9. The parties agree to exercise good faith, reasonable and timely decision-making especially when issues arise in the field pertaining to relocation.

9.4 Third Party Relocations. Whenever (i) any third party within the Franchise Area, other than as a part of a Public Right-of-Way Improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of PSE's Facilities within the Franchise Area solely for the benefit of any person or entity other than the City, then in such event, PSE shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

9.5 City Imposed Conditions. Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a required relocation for purposes of Section 9.4 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development); provided, however, (a) in the event the City reasonably determines (and promptly notifies PSE in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a Public Right-of-Way Improvement to be undertaken within the Franchise Area, and (b) such Public Right-of-Way Improvement is otherwise reflected in the City's 6-year Capital Facilities Plan or Transportation Improvement Plan, then only those costs and expenses incurred by PSE in integrating and connecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such other person or entity, and PSE shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with the provisions of Section 9.1. The Director will assign at the City's cost a Project Manager for the design and construction of the project.

9.6 Reservation of Rights. Nothing in this Section 9 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

Section 10. Shared Use of Excavations.

10.1 Coordination. PSE and the City shall each exercise best efforts to coordinate any construction work that either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole and to minimize disruption to users of City facilities. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Area informed of any intent to undertake construction work. PSE and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

10.2 Shared Use. In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to both parties.

10.3 Conduit. The City may elect, by written request to PSE, to have PSE install conduit in PSE's trenches for the City's use and ownership; provided such work for the City does not unreasonably delay the work of PSE, the work is arranged and accomplished upon terms and conditions reasonably acceptable to the City and PSE, and the City agrees to reimburse PSE for the incremental cost of installing such conduit.

Section 11. City Use of Facilities.

11.1 Communication Equipment. During the term of this Franchise, and solely with respect to poles that are owned (in whole or in part) by PSE and located within the Franchise Area, the City may, subject to PSE's prior written consent which shall not be unreasonably withheld, install and maintain City-owned communication equipment, sensors, wires and fiber for non-commercial municipal purposes, and such use will be administered under a joint facilities use agreement between the City and PSE. The City shall be required to incur the costs associated with conducting the engineering feasibility assessment associated with PSE's Joint Facilities Attachment agreements.

11.2 Installation and Maintenance of City-Owned Equipment. Installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as PSE may specify from time to time including, without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities.

11.3 Indemnification. PSE shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned equipment, wires, and/or fiber or the installation or maintenance thereof.

11.4 No Rental Charge to City. PSE shall not charge the City a rental fee for the City's use of the poles provided, however, that nothing herein shall require PSE to bear any cost or expense in connection with any such installation and/or maintenance by the City. PSE may charge the City an administrative fee for the purposes of reviewing such joint facility installations.

Section 12. Vegetation Management and Facility Maintenance.

12.1 Coordination. The Parties recognize that any appropriate vegetation management plan should adequately balance safety, reliability, vegetation health and community aesthetic concerns and the clearances between vegetation and PSE's Facilities necessary for public safety and PSE's operations, including clearances mandated by applicable federal and state laws. PSE will coordinate its vegetation management activities within and/or adjacent to the Franchise Area with appropriate City departments, including Public Works, Fire, Parks and Community Development. PSE will follow the vegetation management procedure set forth herein and comply with all City ordinances, regulations, rules and conditions contained within its right-of-way permit; provided, however, that such commitment to coordinate with the City shall not limit PSE's right under this Franchise or duty under applicable federal or state law to remove or trim vegetation which, due to proximity to PSE's Facilities, poses an imminent risk to public safety. Trimming and removal of vegetation within and/or adjacent to the Franchise Area will be performed using standard practices accepted by the International Society of Arboriculture addressing vegetation health and aesthetics.

12.2 Vegetation Management Procedure.

12.2.1 The City's Code Administrator (as defined in TMC 16.08.030), or his/her designee, shall be notified at least seven (7) business days prior to any vegetation management work being conducted within City limits; except that

emergency work can be done the same day providing that the Code Administrator is contacted either by phone or e-mail. If the Code Administrator is not available, a message can be left and City staff will review the nature of the work on the next available business day.

12.2.2 All pruning shall be conducted under current International Society of Arboriculture standards. PSE's project manager and crew foreman shall be aware of these standards and ensure that they are implemented for all pruning conducted by or for PSE within the City.

12.2.3 PSE or its contractors shall trim trees according to species growth habits. PSE's project manager and crew foreman shall be aware of different tree species and understand their corresponding growth habits.

12.2.4 In the event trees need to be trimmed within and/or adjacent to the Franchise Area or within City owned property (including native trees and developed parks), the City shall be notified five (5) business days ahead of time and shall be provided the opportunity to have the trees removed entirely. Replacement trees shall be provided in accordance with TMC 16.08.

12.2.5 All debris associated with line clearance tree trimming and/or removal work within or adjacent to the Franchise Area or within City owned property (including native trees and developed parks) shall be chipped and removed by PSE or its contractor from the site at no cost to the City. 'Drop and scatter' practices require prior approval from the Code Administrator.

12.2.6 When trees are heavily trimmed or removed within native areas, the work shall be performed in such a way as to avoid damage to other trees within that area. If additional trees are accidentally damaged during such work, PSE, or its contractor, shall use its best efforts to appropriately prune any such damaged trees. The Code Administrator is to be contacted immediately in the event of any unplanned damage to City owned trees.

12.2.7 Climbing trees with gaffs or spikes is strongly discouraged on any deciduous, hardwood or thin bark tree species unless the tree is to be removed.

12.2.8 A knowledgeable PSE representative shall stay in close communication with the Code Administrator while vegetation management work is performed within the City. Periodic performance reviews shall be conducted at the request of the Code Administrator.

12.3 Vegetation Species. PSE will, in coordination with City staff, identify vegetation species appropriate for location in proximity to PSE Facilities and shall

cooperatively act with the City to promote use of such identified species in proximity to those Facilities.

12.4 Upon notification of PSE by the City of graffiti on PSE Facilities, PSE shall remove or paint over the graffiti within the next seven (7) work days. Should PSE fail to respond within this timeframe, the City may remove or paint over the graffiti and charge PSE for such work.

Section 13. Restoration/Removal Obligations.

13.1 Except as otherwise provided in this Section 13.1, in the event PSE permanently ceases use of any of its Facilities within the Franchise Area, PSE shall, within one hundred and eighty (180) days after such permanent cessation of use, or such additional time as is agreed to between the parties, remove such Facilities at its sole cost and expense. However, with the express written consent of the City, PSE may leave such Facilities in place subject to the conditions set forth by the City.

13.2 Any gas Facilities to be left in place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards.

13.3 The City's consent shall not relieve PSE of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public, in which case PSE shall perform such work at no cost to the City.

13.4 The obligations contained in this Section shall survive the expiration, revocation or termination of this Franchise.

Section 14. Meet and Confer.

14.1 Emergency Management. Annually, upon the request of the City, PSE will meet with the City Fire Department to coordinate emergency management operations and, at least once a year, at the request of the City, PSE personnel will actively participate with either the Fire Department or the City Emergency Operations Center in emergency preparedness drills or planning sessions.

14.2 Future Construction Plans. PSE and the City shall, upon the request of the City, meet annually to review each party's proposed plans within the City and the City's urban growth area. The City shall provide PSE with information

concerning the scope and schedule for all of its capital facility and transportation improvements planned within the Franchise Area. PSE shall provide the City with information concerning the scope and schedule for its Facilities installations or improvements planned within the Franchise Area. The parties shall prepare an annual report documenting the meeting and the projects reviewed.

14.3 If, during the course of an annual meeting conducted pursuant to Section 14.2, the parties mutually identify an imminent PSE project in which PSE plans to install and operate any Facilities (excluding Facilities not customarily operated by PSE on franchised right-of-way) on a private easement at a location or locations outside of the Franchise Area but within an area designated to be future City right-of-way in the City's Transportation Plan, Six-year Transportation Improvement Plan, or Transportation Capital Facilities Plan, then the City shall have the option of providing sufficient space for such Facilities at the designated location(s) by obtaining additional right-of-way or other rights mutually agreeable to the City and PSE, which shall be Franchise Area, title of which shall be in the City's name.

14.4 If, with respect to the Facilities described in Section 14.3, (a) the City elects not to, or otherwise fails to, expand the Franchise Area and provide sufficient space for such Facilities at the designated location(s) by obtaining additional right-of-way or other rights mutually agreeable to the City and PSE on or before the date required to meet PSE's project schedule (as reasonably determined by PSE), or (b) locating such Facilities within the Franchise Area (as then-existing or proposed to be expanded) would be inconsistent with prudent utility practice, PSE may install the Facilities on property outside the Franchise Area, the rights for which shall be obtained by PSE at no expense to the City. The parties shall each act in good faith to mutually agree on the location of such Facilities outside of the Franchise Area. Absent such mutual agreement, nothing in this Section 14 shall limit the rights of either party with respect to acquisition or use of property rights outside of the Franchise Area.

Section 15. Reservation of Easement in Event of Vacation.

In the event the City vacates any portion of the Franchise Area during the term of this Franchise, the City shall, in its vacation procedure, reserve and grant an easement to PSE for all PSE's Facilities within the vacation area.

Section 16. Moving Buildings within the Franchise Area.

If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to arrange with PSE for

the temporary adjustment of PSE's overhead wires necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to PSE, not less than thirty (30) days prior to the moving or removal of such building or other object. In such event, PSE shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its overhead wires which may obstruct the moving or removal of such building or object.

Section 17. Indemnification.

17.1 Indemnity. PSE shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of PSE, its agents, servants or employees in exercising the rights granted to PSE in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

17.2 Title 51 Waiver. Solely to the extent required to enforce the indemnification provided in this Section 17, PSE hereby waives immunity under Title 51 RCW in any cases involving the City; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought directly against PSE by any of its employees. The obligations of PSE under this Section have been mutually negotiated by the Parties hereto, and PSE acknowledges that the City would not enter into this Franchise without the foregoing limited waiver of PSE's waiver immunity.

Section 18. Insurance.

18.1 General. PSE shall procure and maintain for the duration of the Franchise, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives, employees or subcontractors. PSE shall provide evidence of self-insurance and/or an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City for its

inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise, and such self-insurance and/or insurance certificate shall evidence the following minimum coverages:

18.1.1 Comprehensive general liability insurance including coverage for premises, operations, personal and advertising injury, explosions, collapse or underground property damage and products-completed operations, written on an occurrence basis, with limits not less than:

18.1.1.1 \$2,000,000 each occurrence;

18.1.1.2 \$4,000,000 products-completed operations aggregate limit; and

18.1.1.3 \$4,000,000 general aggregate.

18.1.2 Automobile liability for owned, non-owned and hired vehicles with a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident.

18.1.3 Worker's compensation as required by the Industrial Insurance laws of the State of Washington and employer's liability insurance with limits of not less than \$1,000,000.

18.1.4 Contractor's Pollution Legal Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor. The Contractor's Pollution Legal Liability insurance shall be written in an amount of at least \$1,000,000 per loss, with the annual aggregate of at least \$1,000,000.

If Contractor's Pollution Legal Liability insurance is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Franchise; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time the work under the Franchise is completed.

The City shall be named by endorsement as an insured on the Contractor's Pollution Legal Liability insurance policy.

Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement CA 99 48 shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

18.1.5 Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

18.2 Deductibles and Retention. Any deductibles or self-insured retentions must be declared to the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

18.3 Primary Insurance. PSE's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

18.4 Cancellation. In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide:

"The above described policies will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, PSE shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

18.5 Self-Insurance. In lieu of the insurance requirements set forth in this Section 18, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance.

Section 19. Performance Bond.

19.1 Within sixty (60) days of the Effective Date of this Franchise, PSE will provide a performance bond to the City, in the total sum of \$50,000.00 which will remain in effect for the term of this Franchise in a form acceptable to the City. The performance bond is to ensure the faithful performance of PSE's obligations under the Franchise including the payment by PSE of any penalties, claims, liens, fees, or assessments due the City. In the event PSE undertakes construction, the cost of which exceeds \$100,000, the City shall have the option of requesting PSE provide and maintain, at its sole cost and expense, an additional performance bond. The amount of the bond shall not exceed one-

hundred twenty percent (120%) of the cost of the work or improvements covered by the bond based on estimated costs immediately following the expiration of the bond. PSE will pay all premiums or other costs associated with maintaining the bond. The City may reduce the amount of the performance bond consistent with PSE's performance of its responsibilities under this Franchise and applicable law.

19.2 The performance bond will be from a major financial institution or surety. The performance bond will not require the consent of PSE prior to the collection by the City of any amounts covered by the performance bond. The City will provide to PSE reasonable written notice and opportunity to cure any alleged non-compliance of any provision of the Franchise or any penalties, claims, liens, fees or assessments due the City.

19.3 If the Franchise is terminated, or upon expiration or transfer of the Franchise, the City will return the original bond or sign the necessary documentation to release the bond promptly if PSE does not have any unexpired obligations with respect to right-of-way work and does not owe funds to the City or is not in default of a material provision of the Franchise.

Section 20. Assignment.

PSE shall not have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any assignee shall, within thirty (30) days of the date of any approved assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written consent, to mortgage its rights, benefits and privileges in and under this Franchise to the Trustee for its bondholders.

Section 21. Charge for Administrative Costs.

As and to the extent provided in RCW 35.21.860, PSE agrees to pay a fee of \$5,000 for the actual reasonable administrative expenses incurred by the City that are directly related to preparing and approving this Franchise. Subject to RCW 35.21.860 and other applicable laws, nothing herein shall preclude the City from charging administrative fees or recovering any administrative costs incurred by the City in the approval of permits or in the supervision, inspection or examination of all work by PSE in the Franchise Area as prescribed in accordance with applicable provisions of the City Code and City regulations.

Section 22. Default and Dispute Resolution.

22.1 Notice. If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify PSE in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) business days of its receipt of such notice, PSE shall provide written response to the City that shall acknowledge receipt of such notice and state PSE's intentions with respect to how PSE shall respond to such notice. PSE shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

22.1.1 Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 22.2, or;

22.1.2 Resolve the dispute or cure the default, or;

22.1.3 Notify the City that PSE cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, PSE shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by PSE and the projected completion date. In such case, the City may set a meeting.

22.2 Meeting. If any dispute is not resolved or any alleged default is not cured or a meeting is requested, then the City shall promptly schedule a meeting between the City and PSE to discuss the dispute or any alleged default. The City shall notify PSE of the meeting in writing and such meeting shall take place not less than ten (10) business days after PSE's receipt of notice of the meeting unless otherwise agreed by the parties. Each party shall appoint a representative who shall attend the meeting and be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) business days following the conclusion of the meeting shall be referred by the parties' representatives in writing to the senior management of parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) business days of such referral (or such other period as the parties may agree upon), each party may pursue resolution of the dispute or any alleged default through other legal means consistent with this Franchise. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

22.3 Remedies. If, at the conclusion of the steps provided for in Section 22.1 and 22.2 above, the City and PSE are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or PSE (as PSE may have authority to do so) may:

22.3.1 Take any enforcement or corrective action provided for in City Code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise, and/or;

22.3.2 Request mutually agreeable mediation or arbitration, and/or;

22.3.3 By ordinance, declare an immediate forfeiture of this Franchise for a breach of any material obligation under this Franchise, and/or;

22.3.4 Take other action to which it is entitled under this Franchise or any applicable law such as litigation in court.

22.4 Continued Performance. Unless otherwise agreed by the City and PSE in writing, the City and PSE shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

22.5 Cumulative Remedies. No provision of this Franchise shall be deemed to bar the right of the City or PSE to seek or obtain judicial relief from a violation of any portion of the Franchise or any rule, regulation, requirement or directive promulgated. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City or PSE to recover monetary damages for such violations by the other Party, or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 23. Miscellaneous.

23.1 Severability, Headings. If any term, provision, condition or portion of this Franchise shall be held to be invalid; such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

23.2 Amendment. This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

23.2.1 References this Franchise; and

23.2.2 States that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

23.3 Tariffs. This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

Section 24. No Third Party Beneficiary.

Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the City and PSE. No action may be commenced or prosecuted against either the City or PSE by any third party claiming as a third party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either the City or PSE.

Section 25. Attorney Fees.

In the event either party defaults on the performance of any terms in this Franchise, and the other party places the enforcement of the Franchise or any part thereof or for the collection of any monies due, or to become due hereunder, in the hands of an attorney, or files suit upon the same, the prevailing party shall be entitled to an award of all reasonable attorneys' fees, costs and expenses.

Section 26. Venue.

The venue for any dispute related to this Franchise shall be Thurston County, Washington.

Section 27. Governing Law.

This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

Section 28. No Waiver.

Failure of either party to declare any breach or default by the other party immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but such party shall have the right to declare any such breach or default at any time. Failure of either party to declare one breach or default does not act as a waiver of such party's right to declare another breach or default.

Section 29. Notices.

Any notices required to be given by the City to PSE or by PSE to the City shall be delivered to the parties at the following addresses:

PSE:
Puget Sound Energy, Inc.
Attn: Municipal Liaison Manager
Community and Business Services
P.O. Box 90868 BOT-1G
Bellevue, WA 98009-0868

With a copy to:
Puget Sound Energy, Inc.
Attn: General Counsel
P.O. Box 90868
Bellevue, WA 98009-0868

City:
City of Tumwater
Attn: Public Works Director
555 Israel Road SW
Tumwater, WA 98501

With a copy to:
Tumwater City Attorney
Attn: Karen Kirkpatrick
555 Israel Road SW
Tumwater, WA 98501

Section 30. Effective Date.

This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.

Signed and approved by the Mayor on the 15th day of September, 2015.



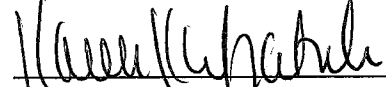
Pete Kmet, Mayor

ATTEST:



Melody Valiant, City Clerk

APPROVED AS TO FORM:



Karen Kirkpatrick, City Attorney

Published: 09-20-2015

Effective Date: 10-20-2015

HONORABLE MAYOR AND CITY COUNCIL
CITY OF TUMWATER, WASHINGTON

In the matter of the application)
of Puget Sound Energy, Inc., a) Franchise Ordinance No. O2015-006
Washington corporation, for a)
franchise to construct, operate)
and maintain facilities in, upon,)
over under, along, across and)
through the franchise area of the) ACCEPTANCE
City of Tumwater, Washington.)

WHEREAS, the City Council of the City of Tumwater, Washington, has granted a Franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. O2015-006, bearing the date of September 15, 2015; and

WHEREAS, a copy of said Ordinance granting said Franchise was received by the Puget Sound Energy, Inc. on September 21, 2015, from said City of Tumwater, Thurston County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Tumwater, Thurston County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned Janet Karran thereunto duly authorized on this 23rd day of September, 2015.

ATTEST:

Virginia Hehl

PUGET SOUND ENERGY, INC.

By: Janet Karran

Copy received for City of Tumwater
on September 24, 2015

By: Melroy Ka
City Clerk

